House Study Bill 249 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON

AGRICULTURE BILL BY

CHAIRPERSON PAUSTIAN)

A BILL FOR

- 1 An Act regulating the application of pesticides, including by
- 2 providing for the certification of applicators, and certain
- 3 actions taken by the department of agriculture and land
- 4 stewardship against private applicators, and providing
- 5 penalties.
- 6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 1 Section 1. Section 206.5, subsection 6, Code 2021, is 2 amended to read as follows:
- 3 6. An employee of a food processing and distribution
- 4 establishment is exempt from the certification requirements
- 5 of this section provided that at least one person holding
- 6 a supervisory position is certified and provided that the
- 7 employer provides a program, approved by the department, for
- 8 training, testing, and certification of personnel who apply, as
- 9 an incidental part of their duties, any pesticide on property
- 10 owned or rented by the employer. However, an employee exempt
- ll from the certification requirements of this section shall
- 12 not apply restricted use pesticides. The secretary shall
- 13 adopt rules to administer the provisions of this paragraph
- 14 subsection.
- 15 Sec. 2. Section 206.19, subsection 5, Code 2021, is amended
- 16 to read as follows:
- 17 5. a. Establish, assess, and collect civil penalties for
- 18 violations a violation of a provision in this chapter or a rule
- 19 adopted pursuant to this chapter by a commercial applicators
- 20 applicator or private applicator. In determining the amount
- 21 of the \underline{a} civil penalty \underline{to} be assessed for a violation, the
- 22 department shall consider all of the following factors:
- 23 (1) The willfulness of the violation.
- 24 (2) The actual or potential danger of injury to the public
- 25 health or safety, or damage to the environment caused by the
- 26 violation.
- 27 (3) The actual or potential cost of the injury or damage
- 28 caused by the violation to the public health or safety, or to
- 29 the environment.
- 30 (4) The actual or potential cost incurred by the department
- 31 in enforcing this chapter and rules adopted pursuant to this
- 32 chapter against the violator.
- 33 (5) The remedial action required of the violator.
- 34 (6) The violator's previous history of complying with
- 35 orders or decisions of the department.

- 1 b. The amount of the civil penalty that may be assessed
- 2 for each violation committed by a commercial applicator or
- 3 <u>private applicator</u> shall not exceed five hundred dollars for 4 each offense.
- 5 Sec. 3. <u>NEW SECTION</u>. **206.23B** Private pesticide applicator 6 peer review panel.
- 7 l. The department shall establish a private pesticide
- 8 applicator peer review panel to assist the department in
- 9 assessing or collecting a civil penalty pursuant to section
- 10 206.19. The secretary shall appoint five members, including
- 11 three certified private applicators and two members of the
- 12 public who have not been licensed or certified under this
- 13 chapter. The appointments shall be made on a geographically
- 14 balanced basis.
- 15 2. a. The members appointed pursuant to this section
- 16 shall serve four-year terms beginning and ending as provided
- 17 in section 69.19. However, the secretary shall appoint
- 18 initial members to serve for less than four years to ensure
- 19 that members serve staggered terms. A member is eligible for
- 20 reappointment. A vacancy on the panel shall be filled for the
- 21 unexpired portion of the regular term in the same manner as
- 22 regular appointments are made.
- 23 b. The panel shall elect a chairperson who shall serve for a
- 24 term of one year. The panel shall meet on a regular basis and
- 25 at the call of the chairperson or upon the written request to
- 26 the chairperson of two or more members. Three voting members
- 27 constitute a quorum and the affirmative vote of a majority of
- 28 the members present is necessary for any substantive action
- 29 to be taken by the panel. The majority shall not include any
- 30 member who has a conflict of interest and a statement by a
- 31 member that the member has a conflict of interest is conclusive
- 32 for this purpose. A vacancy in the membership does not impair
- 33 the duties of the panel.
- 34 c. Notwithstanding section 7E.6, the members shall only
- 35 receive reimbursement for actual expenses for performance of

1 their official duties, as provided by the department.

- 2 d. The panel shall be staffed by the department.
- 3 3. The panel shall make recommendations to the department
- 4 regarding the establishment of civil penalties and procedures
- 5 to assess and collect penalties, as provided in section 206.19.
- 6 The panel may propose a schedule of penalties for minor and
- 7 serious violations. The department may adopt rules based on
- 8 the recommendations of the panel as approved by the secretary.
- 9 4. The panel shall review cases of persons required to
- 10 be certified as private applicators who are subject to civil
- 11 penalties as provided in section 206.19 according to rules
- 12 adopted by the department. A review shall be performed upon
- 13 request by the secretary or the person subject to the civil
- 14 penalty. The panel may establish procedures for the review and
- 15 establish a system of prioritizing cases for review, consistent
- 16 with rules adopted by the department. The rules may exclude
- 17 review of minor violations. The review may also include the
- 18 manner of assessing and collecting the civil penalty. The
- 19 findings and recommendations of the panel shall be included in
- 20 a response delivered to the department and the person subject
- 21 to the penalty. The response may include a recommendation
- 22 that a proposed civil penalty be modified or suspended, that
- 23 an alternative method of collection be instituted, or that
- 24 conditions be placed upon the certification of a private
- 25 applicator.
- 26 5. The department shall adopt rules establishing a period
- 27 for the review and response by the panel which must be
- 28 completed prior to a contested case hearing under chapter 17A.
- 29 A hearing shall not be delayed after the required period for
- 30 review and response, except as provided in chapter 17A.
- 31 6. This section does not apply to a certification revocation
- 32 proceeding under section 206.11. This section does not
- 33 require the department to delay the prosecution of a case if
- 34 immediate action is necessary to reduce the risk of harm to
- 35 the environment or public health or safety. This section also

1 does not require a review or response if the department refers 2 a violation of this chapter for criminal prosecution, or for an 3 action involving a "stop sale, use, or removal" order issued 4 pursuant to section 206.16. The department shall consider any 5 available response by the panel, but is not required to change 6 findings of an investigation, a penalty sought to be assessed, 7 or a manner of collection.

8 7. An available response by the panel may be used as 9 evidence in an administrative hearing, or a civil or criminal 10 case, except to the extent that information is considered 11 confidential including as provided in section 22.7.

12 EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

15 This bill amends provisions in the "Pesticide Act GENERAL. 16 of Iowa" (Code chapter 206), regulating the use of pesticides 17 by certain persons referred to as applicators. A pesticide 18 includes a substance that prevents, destroys, repels, or 19 mitigates any insect, animal, nematode, fungi, weed, or virus 20 (Code section 206.2(21)). A commercial or public applicator 21 cannot apply any pesticide, and a private applicator cannot 22 apply a restricted use pesticide without being certified by the 23 department of agriculture and land stewardship (DALS) (Code 24 section 206.5(1)). A restricted use pesticide is subject to 25 more stringent regulations, and certification standards must 26 account for the application of such pesticides (Code section The designation of a pesticide as belonging to the 27 206.7). 28 class of restricted use pesticides is determined by DALS (Code 29 section 206.20) and is generally based on determinations of 30 the United States environmental protection agency (40 C.F.R. 31 §152.175). A person is required to be certified as a private 32 applicator if the person applies or supervises the application 33 of a restricted use pesticide on property owned or leased by 34 the person (Code section 206.2(6)). A commercial, private, or 35 public applicator must complete an educational program (Code

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- 1 section 206.5). In addition, certain persons must be licensed,
- 2 including commercial applicators (Code section 206.6) and
- 3 dealers (Code section 206.8).
- 4 EMPLOYEE OF A FOOD PROCESSING AND DISTRIBUTION
- 5 ESTABLISHMENT. An employee of a food processing and
- 6 distribution establishment may act as an applicator without
- 7 being certified so long as another person holding a supervisory
- 8 position over the employee is certified. The bill provides
- 9 that the exception does not apply to an employee who applies a
- 10 restricted use pesticide (amended Code section 206.5(6)).
- 11 CIVIL PENALTIES. DALS may impose a civil penalty for a
- 12 violation of the Code chapter by a commercial applicator and
- 13 the bill provides that a private applicator is subject to
- 14 the same civil penalty (amended Code section 206.19(5)). An
- 15 assessment of the civil penalty is based upon a number of
- 16 factors relating to the intent of the violator, the extent
- 17 that the violation poses a danger to the public, the cost of
- 18 the injury or damage caused by the violation, remedial action
- 19 required of the violator, and the violator's previous history.
- 20 The amount of the penalty cannot exceed \$500 for each offense.
- 21 Generally, a person who violates a provision in Code chapter
- 22 206 commits a serious misdemeanor (Code section 206.22). A
- 23 serious misdemeanor is punishable by confinement for no more
- 24 than one year and a fine of at least \$430 but not more than
- 25 \$2,560.
- 26 PRIVATE PESTICIDE APPLICATOR PEER REVIEW PANEL. The
- 27 bill creates a private pesticide applicator peer review
- 28 panel composed of five persons appointed by the secretary of
- 29 agriculture (new Code section 206.23B). Three of the persons
- 30 must be certified public applicators and two of the persons
- 31 must be members of the public who have not been certified
- 32 or licensed under the Code chapter. Otherwise, the panel
- 33 closely resembles the existing commercial pesticide applicator
- 34 peer review panel (Code section 206.23A). The new panel must
- 35 make recommendations to DALS regarding the establishment of

- 1 civil penalties against private applicators. The new panel
- 2 must also review cases of persons required to be certified
- 3 as private applicators who are subject to civil penalties
- 4 as provided in the bill. A review requirement does not
- 5 apply in a number of circumstances, including certification
- 6 revocation proceedings or an action involving an immediate risk
- 7 of harm to the environment or public health. The bill does
- 8 not require a review if DALS refers a violation for criminal
- 9 prosecution, or for an action involving a stop order issued
- 10 by DALS. DALS is not required to change the findings of an
- 11 investigation, a penalty sought to be assessed, or a manner of
- 12 collection. A response by the panel may be used as evidence in
- 13 an administrative hearing, or a civil or criminal case, except
- 14 when the information is considered confidential.